

**SCHAFKOPF LAW, LLC**  
ATTORNEYS AT LAW

November 21, 2018

U.S. District Court, ED of PA  
Office of the Clerk of Court  
U.S. Courthouse  
601 Market Street, Room 2609  
Philadelphia, PA 19106

**Re: Kevin Miller v. Reading Police Department et al**

To Whom It May Concern:

Enclosed please find one (1) original and one (1) copy of Plaintiff's Civil Action Complaint, along with a CD containing a pdf version of same and a check in the amount of \$400.00, in regards to the above captioned matter.

Kindly file the original Complaint and return a time-stamped copy to the undersigned along with the Civil Action Summons.

Sincerely,



Gary Schafkopf, Esq.

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

Kevin Miller

**(b) County of Residence of First Listed Plaintiff** Pensacola FL  
 (EXCEPT IN U.S. PLAINTIFF CASES)

**(c) Attorneys (Firm Name, Address, and Telephone Number)**  
 Schafkopf Law LLC, 11 Bala Ave Bala Cynwyd PA 19004; 610-664-5200  
 Weisberg Law, 7 S. Morton Ave Morton PA 19107; 610-690-0801

**DEFENDANTS**

Reading Police Department, Detective Joseph Snell and John Does

County of Residence of First Listed Defendant  
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
 THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- |  |  |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)   |

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)  
 (For Diversity Cases Only)

Citizen of This State	PTF	DEF	PTF	DEF
<input type="checkbox"/> 1 Citizen of This State	<input type="checkbox"/>	<input checked="" type="checkbox"/> 1 Incorporated or Principal Place of Business In This State	<input type="checkbox"/>	<input type="checkbox"/> 4
<input type="checkbox"/> 2 Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State	<input type="checkbox"/>	<input type="checkbox"/> 5
<input type="checkbox"/> 3 Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3 Foreign Nation	<input type="checkbox"/>	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN** (Place an "X" in One Box Only)

- |   |   |  |   |  |  |   |
|---|---|--|---|--|--|---|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from Another District (specify) | <input type="checkbox"/> 6 Multidistrict Litigation - Transfer | <input type="checkbox"/> 8 Multidistrict Litigation - Direct File |
|---|---|--|---|--|--|---|

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Due Process Clause IV, XIV and VIII

**VI. CAUSE OF ACTION**

Brief description of cause:

Plaintiff was subject to malicious prosecution

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION  
 UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:  
**JURY DEMAND:**  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

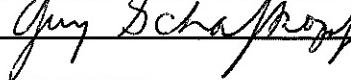
JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

11/21/2018



FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

Kevin Miller	:	CIVIL ACTION
v.	:	
Reading Police Department et al	:	NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

11-21-18	Gary Schafkopf, Esq	Plaintiff
Date	Attorney-at-law	Attorney for
610-664-5200	888-283-1334	gary@schaflaw.com
Telephone	FAX Number	E-Mail Address

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

**DESIGNATION FORM**

*(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)*

Address of Plaintiff: \_\_\_\_\_ 4301 Creighton Rd Apt 161 Pensacola FL 32504

Address of Defendant: \_\_\_\_\_ 815 Washington Street Reading PA 19601

Place of Accident, Incident or Transaction: \_\_\_\_\_ Reading Pennsylvania

**RELATED CASE, IF ANY:**

Case Number: \_\_\_\_\_ Judge: \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when **Yes** is answered to any of the following questions:

- |  |                              |  |
|--|------------------------------|--|
| 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?            | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?  | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

I certify that, to my knowledge, the within case  is /  is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 11/21/2018

*Gary Schapko Jr.*  
Attorney-at-Law / Pro Se Plaintiff

83362

Attorney I.D. # (if applicable)

**CIVIL: (Place a ✓ in one category only)****A. Federal Question Cases:**

- 1. Indemnity Contract, Marine Contract, and All Other Contracts
  - 2. FELA
  - 3. Jones Act-Personal Injury
  - 4. Antitrust
  - 5. Patent
  - 6. Labor-Management Relations
  - 7. Civil Rights
  - 8. Habeas Corpus
  - 9. Securities Act(s) Cases
  - 10. Social Security Review Cases
  - 11. All other Federal Question Cases
- (Please specify): \_\_\_\_\_

**B. Diversity Jurisdiction Cases:**

- 1. Insurance Contract and Other Contracts
- 2. Airplane Personal Injury
- 3. Assault, Defamation
- 4. Marine Personal Injury
- 5. Motor Vehicle Personal Injury
- 6. Other Personal Injury (Please specify): \_\_\_\_\_
- 7. Products Liability
- 8. Products Liability – Asbestos
- 9. All other Diversity Cases (Please specify): \_\_\_\_\_

**ARBITRATION CERTIFICATION**

*(The effect of this certification is to remove the case from eligibility for arbitration.)*

I, \_\_\_\_\_, counsel of record or pro se plaintiff, do hereby certify:

- Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- Relief other than monetary damages is sought.

DATE: 11/21/2018

*Gary Schapko Jr.*  
Attorney-at-Law / Pro Se Plaintiff

83362

Attorney I.D. # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

WEISBERG LAW  
Matthew B. Weisberg, Attorney ID No. 85570  
7 South Morton Ave.  
Morton, PA 19070  
610-690-0801  
Fax: 610-690-0880  
**Attorney for Plaintiff**

Schafkopf Law, LLC  
Gary Schafkopf, Attorney ID No. 83362  
11 Bala Ave  
Bala Cynwyd, PA 19004  
610-664-5200 Ext 104  
Fax: 888-283-1334  
**Attorney for Plaintiff**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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<b>KEVIN MILLER</b>	:	
4301 Creighton Rd	:	CIVIL ACTION
Apt 161	:	
Pensacola, FL 32504	:	
	Plaintiff,	DOCKET NO.
v.	:	
<b>READING POLICE DEPARTMENT</b>	:	
815 Washington Street	:	JURY TRIAL OF TWELVE (12)
Reading PA 19601	:	JURORS DEMANDED
and	:	
<b>DETECTIVE JOSEPH SNELL</b>	:	
Individually and in his official capacity	:	
as a Detective for the Reading	:	
Police Department	:	
815 Washington Street	:	
Reading PA 19601	:	
and	:	
<b>JOHN DOES 1-10</b>	:	
Defendants.	:	

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**CIVIL ACTION COMPLAINT**

**PARTIES, JURISDICTION AND VENUE**

1. Plaintiff, Kevin Miller is an adult individual residing at the above-captioned address.
2. Defendant, Reading Police Department is a government agency doing business at the above captioned address.

3. Defendant, Joseph Snell who at all times material herein, was employed as a Detective for the Reading Police Department is sued both individually and in his official capacity.
4. Defendants, John Does 1-10 is a moniker/fictitious name for individuals and entities currently unknown but will be substituted when known, as affiliated, associated or liable hereunder for the reasons set forth below or inferred therefrom. Each of these parties are incorporated as Defendants in each and every count and averment listed above and below.
5. Jurisdiction in this Honorable Court is based on federal question 28 U.S.C. §1331; supplemental jurisdiction over state law claims is granted by 28 U.S.C. §1337.
6. Venue lies in this district in that the events giving rise to this claim occurred here, at least one (1) Defendant resides, maintains a principal place of business, and/or does business here, and/or the property which is the subject of this action is situated within this district.

#### **OPERATIVE FACTS**

7. At all times relevant, Kevin Miller was employed by the Italian Garden Bar (a local Reading area bar) as security.
8. Miller is a Marine veteran who specialized in both Infantry and Infantry Security.
9. Miller's military training included small arms training.
10. David Frankhouser was a patron of the Italian Garden Bar and was known to have had issues with security regularly.
11. Miller previously had a gun pulled on him while working at the Italian Garden Bar in the weeks leading up to this incident.
12. David Frankhouser was found to have ties to local gangs within Reading, including "Crip" sects, and to the KKK (through his grandfather).
13. On or about the evening of June 4, 2016, Miller was approached by Frankhouser on the 900

block of Penn Street after the Italian Garden Bar had closed.

14. Frankhouser approached Miller stating that he had a knife, and a gun, and that he was going to kill Miller.

15. The confrontation was captured by security footage from a local business.

16. In the video Miller is seen continuously backing away from Frankhouser.

17. After repeatedly backing away from Frankhouser, Miller drew his weapon, and pointed it at Frankhouser.

18. Frankhouser can be seen momentarily stopping his progression towards Miller but then continued to advance towards Miller.

19. Miller continued to fixate the firearm on Frankhouser and continued to back up.

20. Miller is forced to fire his weapon when Frankhouser did not stop approaching.

21. Miller fired the weapon at Frankhouser's torso at which point Frankhouser falls to the ground.

22. Miller remained on scene after firing the weapon maintaining aim of the firearm at Frankhouser while simultaneously contacting the police, and EMS.

23. Frankhouser arrived at Reading Hospital and was initially determined to be in a relatively stable condition.

24. Because of the nature of the wound to the liver that Frankhouser's injury, he eventually "bled-out" approximately 12 hours later.

25. Miller was detained and questioned by Detective Joseph Snell for three (3) hours and then released.

26. Detective Snell subsequently arrested Miller fifteen (15) hours after his release.

27. On or about June 15, 2018, despite evidence that Miller was acting in self-defense the

Reading Police charged him with first-degree murder.

28. Miller was incarcerated for eighteen (18) months before being acquired at trial of first degree murder.

**COUNT I**

**MALICIOUS PROSECUTION/ WRONGFUL IMPRISONMENT/ FALSE ARREST**

29. Plaintiff incorporates by reference all prior paragraphs as if fully set forth at length herein.

30. At the time of Defendants' investigation, arrest, disciplinary charges, and imprisonment, Plaintiff had not committed any infraction to legally justify not to receive proper service.

31. Defendants' actions stated above, *inter alia*, were committed under color of state law and were violations of Plaintiff's clearly established and well-settled Constitutional and other legal rights.

32. Defendants caused Plaintiff to suffer a malicious prosecution by their wrongful conduct in subjecting Plaintiff to the above, all in violation of the Fourth and Fourteenth Amendments to the United States Constitution.

33. Defendants instituted cruel and unusual punishment action against Plaintiff by way of failing to properly investigate the conduct giving rise to his imprisonment and then subjecting Plaintiff to Defendants' wrongful conduct to the above.

34. Plaintiff was harmed from the time he was arrested by the Reading Police Department through the time he was released from jail.

35. Defendants did not have probable nor any cause to deny Plaintiff bail, and to maintain his imprisonment for 18 months.

**COUNT II**

**VIOLATION OF DUE PROCESS IV, XIV, VIII**

36. Plaintiff incorporates by reference all prior paragraphs as if fully set forth at length herein.

37. At the time of Defendants' investigation, Plaintiff had not committed any infraction giving rise to the probable cause/reasonable suspicion and/or to legally justify keeping Plaintiff in prison without bail prior to being adjudicated by Defendants.

38. Defendants' actions stated above, *inter alia*, were committed under the color of state law and were violations of Plaintiff's clearly established and well-settled Constitutional and other legal rights.

39. Defendants caused Plaintiff to suffer a malicious prosecution by their wrongful conduct in subjecting Plaintiff to unnecessary jail time, all in violation of the Fourth and Fourteenth Amendments to the United States Constitution, and State law.

40. Defendants' willful, reckless and malicious actions were made in an effort to deprive Plaintiff of his rights as set forth above and pursuant to the U.S. Const. Amends. IV, VIII and XIV, actionable through 42 U.S.C. §1983, et seq., as well as common law.

**WHEREFORE**, Plaintiff respectfully requests this Honorable Court enter judgment in his favor and against Defendants, individually, jointly and severally, in an amount in excess of seventy-five thousand dollars (\$75,000.00), plus such other and further relief as this Honorable Court deems necessary and just, and to Order the following relief:

- a. Statutory Damages;
- b. Punitive Damages;
- c. Compensatory Damages, including:
  - i. Actual Damages for financial and physical injuries, including but not limited to wage loss and loss of earning capacity, and emotional distress; and
- d. Attorneys' fees and expenses, costs of suit, and equitable relief.

Respectfully Submitted,

WEISBERG LAW

/s/: Matthew Weisberg  
Matthew Weisberg, Esquire  
Attorney for Plaintiff

DATED: 11-21-18

SCHAFKOPF LAW, LLC

Gary Schafkopf  
Gary Schafkopf, Esquire  
Attorney for Plaintiff

DATED: 11-21-18